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March 22, 2006

VIA U.S. FIRST CLASS MAIL

Thomas Krueger, Esq.
Associate Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C-14J)
Chicago, Illinois 60604-3590

**Re: Ellsworth Industrial Park Site, Downers Grove, Illinois
Wisconsin Avenue Property L.L.C.**

Dear Tom:

We have previously submitted to you three letters dated March 3, 2005, April 14, 2005 and July 6, 2005 with respect to the requests by our client Wisconsin Avenue Property, L.L.C. ("WAP") that the U.S. Environmental Protection Agency ("USEPA") provide relief to it with respect to Ellsworth Industrial Park, Downers Grove, Illinois, which is the subject of response action under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). In our letter dated March 3, 2005, we requested that USEPA provide concurrence that WAP has satisfied the requirements for an "innocent landowner" under CERCLA Section 101(35) so as not to be considered an owner or operator under CERCLA with respect to 2424 Wisconsin Avenue, Downers Grove, Illinois (the "2424 Site") or any other part of Ellsworth Industrial Park. Pursuant to our April 14, 2005 letter, we provided additional information to USEPA to support WAP's status as an "innocent landowner," and we also requested that USEPA enter into a "de minimis landowner" settlement with WAP pursuant to CERCLA Section 122(g)(1)(B). In our letter dated July 6, 2005, we requested that USEPA expedite its consideration of WAP's requests because of the threat of its being named as a third party defendant in some of the pending litigation relating to Ellsworth Industrial Park.

You have advised that, although USEPA believes that WAP has made a strong case in support of its status as an "innocent landowner" and/or its eligibility for a "de minimis landowner" settlement, USEPA intends to defer making a final decision on WAP's requests until the results of the additional subsurface investigation of the 2424 Site are received in connection

with the pending remedial investigation/feasibility study ("RI/FS") required by USEPA with respect to Ellsworth Industrial Park. We understand that commencement of the RI/FS work has been substantially delayed because of protracted negotiations among USEPA and the potentially responsible parties ("PRPs"), but you advised in our telephone discussion on March 15, 2006 that the RI/FS field work is now expected to be commenced in May or June, 2006 and is expected to take about two months to complete. Because it is not known when (during this two month period) the subsurface investigation of the 2424 Site will be performed, it is possible that the "real time" data from the RI/FS work at the 2424 Site will be received any time between May and August, 2006, or later if the commencement of the RI/FS work is delayed. This is a substantially later date for USEPA to respond to WAP's requests than WAP had originally hoped.

During the interim period in which WAP has been waiting for USEPA's formal response to WAP's request, several key events relating to WAP's circumstances have occurred, including the following:

1. In the summer of 2005, WAP was named as a third party defendant and a counterclaim defendant in the proceeding currently pending in Circuit Court of DuPage County, Illinois as *State of Illinois v. Precision Brand Products, Inc. et al.*, Case No. 03 CH 979 (the "State Proceeding").
2. In February 2006, WAP filed a Fourth Party Complaint in the State Proceeding against the parties who sold the 2424 Site to WAP in 1996 and 1997, *i.e.*, 2430 Wisconsin Company, an Illinois general partnership, Daniel Stiehr and Doris D. Stiehr (collectively the "Sellers"). A copy of WAP's Fourth Party Complaint is enclosed herewith for your reference.
3. In March 2006, the Sellers filed their Answer and Affirmative Defenses (the "Answer") to WAP's Fourth Party Complaint. A copy of the Sellers' Answer and Affirmative Defenses is also enclosed herewith for your reference.
4. In February, 2006, Flowserve Corporation, WAP's tenant at the 2424 Site, sold the corporate division that has been occupying the 2424 Site since approximately 2000, and the purchaser of this division (Furmanite, Inc.) has indicated an intention to vacate the 2424 Site, leaving the 2424 Site without a tenant. Furmanite, Inc. has indicated that the principal reason for its decision to vacate the 2424 Site is its concern about potential environmental liability arising from pre-existing environmental conditions if it remains in occupancy at the 2424 Site. Although you have indicated that USEPA may issue a "comfort letter" to assure Furmanite, Inc. (or other prospective tenants of the 2424 Site) that they will not be considered PRPs if they occupy the 2424 Site, it is uncertain at this point what the

final terms of such comfort letter will be and whether such final letter will be sufficient to enable WAP to keep the 2424 Site occupied by rent-paying tenants.

5. WAP has incurred substantial legal costs in connection with its efforts to obtain a settlement with USEPA as requested in the March 3, 2005, April 14, 2005 and July 6, 2006 letters, to defend the claims against it in the State Proceeding and to assert the claims against the Sellers which have been necessitated by the continued unavailability of a settlement with USEPA. As a consequence, WAP's financial resources have been drained, leaving it with few, if any, remaining funds and reduced opportunities for generation of rental income to continue to pay its mortgage debt, real estate taxes, insurance costs, and other operating costs and expenses as well as legal and other costs necessary to protect its interests in the State Proceeding and in the pending CERCLA action.

The foregoing circumstances create compelling reasons for USEPA to proceed with a settlement with WAP immediately, without waiting several more months for the results of the data from the RI/FS work at Ellsworth Industrial Park. Of particular note in this regard is the Sellers' Answer to WAP's Fourth Party Complaint against them in the State Proceeding. That Answer contains the following responses from the Sellers on the record that are directly relevant to WAP's eligibility for a settlement with USEPA:

- (a) 2430 Wisconsin Company is or was an Illinois general partnership, the general partners in which included Daniel Stiehr, Doris D. Stiehr, Robert Diebel and possibly other parties. Robert Diebel is deceased. (Answer, paragraph 2). WAP at this time does not know whether there are other general partners in 2430 Wisconsin Company, but WAP does know that Daniel Stiehr and Doris D. Stiehr are alive and living in Boulder, Colorado because both of them were served with WAP's Fourth Party Complaint and have recently signed receipts for certified letters from WAP.
- (b) 2430 Wisconsin Company was the sole beneficiary of an Illinois land trust that owned title to the 2424 Site from January 1, 1978 (or before) until June 2, 1997 (Answer, paragraph 4).
- (c) Bison Gear and Engineering Corporation ("Bison") was a wholly owned subsidiary of Diebel Manufacturing Company, which leased the 2424 Site commencing in 1978 from the Illinois land trust of which 2430 Wisconsin Company was the beneficiary (Answer, paragraph 5). In 1987, Bison was acquired by BGE Acquisition (Answer, paragraph 5). Although the Answer refers to Bison as it existed after this 1987 transaction as "New Bison," it appears from paragraph 5 of the Answer that this transaction was a corporate stock acquisition and that Bison continued as the same corporate entity (albeit under

new ownership) after the 1987 transaction. In our March 3, 2005 letter, we provided a copy of the termination of the lease between the land trust and Bison, which evidences that Bison remained in occupancy of the 2424 Site until June 2, 1997. As such, Bison occupied the 2424 Site from at least 1978 until June 2, 1997.

- (d) Although the Sellers did not answer the allegation as to the nature of Bison's operations on the 2424 Site, we understand that Bison manufactured gears and shafts for electric motors at the 2424 site. The Sellers have admitted that Bison used 1,1,1-trichloroethane in its operations on the 2424 Site (Answer, paragraph 6).
- (e) Daniel Stiehr, a general partner in 2430 Wisconsin Company, was also General Manager of Bison from 1980 to 1984. Daniel Stiehr had personal knowledge of Bison's operations at the 2424 Site during substantial portions of the time period in which Bison occupied the 2424 Site (Answer, paragraph 7).
- (f) At various times during the period in which Bison occupied the 2424 Site, Robert Diebel (who was a general partner in 2430 Wisconsin Company) was secretary, director and shareholder of Bison (Answer, paragraph 8).
- (g) Bison performed an environmental cleanup of the 2424 Site in 1991 (Answer, paragraph 23). Although the Answer states that this cleanup was performed by "New Bison," as noted above it appears that New Bison was the same entity as the "old" Bison, under new ownership.
- (h) The circumstances and scope of the 1991 cleanup action are described generally in the documents attached as Exhibits C, D and E to the Fourth-Party Complaint consisting of (i) an Open Dump Inspection Report dated April 19, 1991 from the Illinois Environmental Protection Agency ("IEPA") (Exhibit C), (ii) an Administrative Warning Notice dated April 22, 1991 issued by IEPA to Bison (Exhibit D) and (iii) letter report dated June 7, 1991 issued by Testing Service Corporation (Bison's environmental consultant) to Bison (Exhibit E). Although the Sellers state in their Answer that they lack sufficient information to admit or deny the factual bases for these documents attached as Exhibits C, D and E, WAP believes that these documents speak for themselves as to the reasons for the 1991 cleanup action at the 2424 Site, *i.e.*, releases of hazardous substances at the 2424 Site in connection with Bison's operations at the 2424 Site. The TSC letter report states that contaminated soils in the area north of the Bison building on the 2424 Site were removed to a depth of between 1 and 4 feet below ground surface in an area of approximate dimensions of 24 feet by 50 feet (Exhibit E).

- (i) Daniel Stiehr has admitted that he had “general knowledge” of the 1991 cleanup action (Answer, paragraph 26).
- (j) 2430 Wisconsin Company entered into a Contract for Sale of Real Estate dated October 10, 1996 (the “Contract”) with Roy Acquisition Corp. as nominee for WAP (Answer, paragraph 9). Although the Sellers attempt to deny in other portions of their Answer that 2430 Wisconsin Company knew that Roy Acquisition Corp. was nominee for WAP or that WAP was the actual purchaser (Answer, paragraphs 1 and 2), in fact WAP was clearly identified in the real estate closing documents as the purchaser under the Contract, including (i) identification of WAP as the grantee of the deed, (ii) identification of WAP as the transferee under the Bill of Sale executed by 2430 Wisconsin Company, (iii) identification of WAP as the purchaser on the Closing Statement executed by 2430 Wisconsin Company and (iv) identification of WAP as the purchaser on the Affidavit of Title executed by 2430 Wisconsin Company. Accordingly, the Sellers’ denials of knowledge that WAP was the purchaser are without merit. We can provide copies of those documents to you if you would like to review them.
- (k) Paragraph 7.08 of the Contract included representations and warranties by 2430 Wisconsin Company to the effect that no releases of hazardous substances on the 2424 Site had occurred. Sellers admit that the Fourth-Party Complaint accurately quotes this representation and warranty from the Contract (Answer, paragraph 10). WAP has alleged in the Fourth-Party Complaint that the Sellers’ failure to disclose the previous hazardous substance releases in connection with Bison’s operations and the 1991 cleanup action constituted breaches of the Seller’s representations and warranties in the Contract. WAP closed the acquisition of the 2424 Site on June 2, 1997 without knowledge of those material facts known to the Sellers.

Although the Sellers deny liability to WAP in their Answer, the Answer, together with the other information provided in my March 3, 2005 letter to you, does provide a sufficient basis to support the following conclusions:

- (i) Bison occupied the 2424 Site for approximately 20 years and conducted manufacturing operations on the 2424 Site which included the use of at least 1,1,1-trichloroethane and probably other hazardous substances as well.
- (ii) IEPA required a cleanup of the 2424 Site in 1991 based on conditions caused by Bison’s operations at the 2424 Site.
- (iii) 2430 Wisconsin Company failed to disclose in the Contract Bison’s previous hazardous substance releases and the 1991 environmental cleanup at the 2424

Site. Although Daniel Stiehr (and therefore 2430 Wisconsin Company) had personal knowledge of the 1991 cleanup action, 2430 Wisconsin Company instead represented and warranted in the Contract that no hazardous substance releases had occurred at the 2424 Site. This constituted a breach of 2430 Wisconsin Company's representation and warranty.

- (iv) 2430 Wisconsin Company (as beneficiary of its Illinois land trust) was the owner of the 2424 Site during the entire time that Bison occupied the 2424 Site. As such, 2430 Wisconsin Company was the owner of the 2424 Site during the time period in which Bison released hazardous substances at the 2424 Site.
- (v) Bison's cleanup action in 1991 was limited to soil removal to a depth of 4 feet below ground surface. The soil and groundwater contamination that Weston Solutions, Inc. ("Weston") has identified in its Data Evaluation Summary Report (Revision 1) dated August 1, 2005 indicates that the contamination at the 2424 Site was detected at depths below 4 feet.
- (vi) If contamination is still present at the 2424 Site, it was present when WAP acquired the 2424 Site and was residual to Bison's operations at the 2424 Site. To the extent that any contamination on the north side of the building is still present, it was not cleaned up as part of the 1991 cleanup action, since the 1991 cleanup action was limited to excavation of shallow soils to a maximum depth of 4 feet below ground surface.
- (vii) Although WAP received Phase I and Phase II environmental reports in 1996 prior to its acquisition of the 2424 Site, the sampling on the north side of the building on the 2424 Site (where the 1991 cleanup work was done) was limited to shallow soils because there was no reason in 1996 to suspect contamination at a deeper depth. This scope of the investigation was further supported by the fact that WAP relied on 2430 Wisconsin Company's representations and warranties in the Contract that no hazardous substance releases had occurred at the 2424 Site.
- (viii) For the reasons stated at length in my letters dated March 3, 2005 and April 14, 2005, WAP conducted "all appropriate inquiry" into the 2424 Site before it acquired the 2424 Site on June 2, 1997. As such WAP, is an "innocent landowner" and has also established eligibility for a "de minimis landowner" settlement under CERCLA Section 122(g)(1)(B).
- (ix) The Sellers have no similar defense to liability under CERCLA because they owned the 2424 Site when Bison was conducting operations on the 2424 Site.

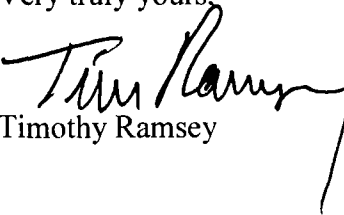
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- (x) In addition, Bison, as the party which occupied and conducted manufacturing operations on the 2424 Site for approximately 20 years and released hazardous substances in connection with these operations, is responsible under CERCLA for any response costs allocable to the 2424 Site.
- (xi) Therefore, to the extent that any response costs are allocable to parties with an interest in the 2424 Site, those costs should be allocated to Bison and the Sellers, not to WAP.

Based on the foregoing, WAP believes that there are sufficient and compelling reasons for USEPA to enter into a "de minimis" landowner settlement with WAP without further delay and without need for the sampling data from the RI/FS work, particularly in view of WAP's financial condition as described above. Further, if USEPA believes that there should be some PRP identified to replace WAP following a settlement, it is clear that the Sellers are much more appropriate parties (than WAP) for USEPA to consider as PRPs with respect to the 2424 Site. This would give USEPA not only Bison, but also the Sellers, to look to for responsibility under CERCLA with respect to the 2424 Site.

WAP reaffirms its commitment to cooperate with USEPA to resolve these matters at the earliest possible date. We look forward to your early response to this letter.

Very truly yours,



Timothy Ramsey